

APPEAL NO. 041798
FILED SEPTEMBER 10, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 28, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____; that the respondent (carrier) is relieved of liability because the claimant did not timely notify his employer of his claimed injury pursuant to Section 409.001 and did not have good cause for failing to do so; that the carrier timely contested compensability pursuant to Section 409.021; and that the claimant did not have disability. The hearing officer's determination on the carrier waiver issue has not been appealed and has become final pursuant to Section 410.169.

The claimant appealed the injury, timely notice to the employer, and disability issues on sufficiency of the evidence grounds. The file does not contain a response from the carrier.

DECISION

Affirmed.

The claimant, a bulldozer operator, testified that he sustained a low back injury on _____, when the bulldozer he was operating hit a large rock, throwing his body forward in the seat. Although the claimant testified he reported his claimed injury to his immediate supervisor at that time, that assertion is disputed and denied by the supervisor. The claimant continued working until September 11, 2003, when his employment was terminated for an unrelated matter. The carrier asserts that the claimed injury was first reported on September 19, 2003, when the claimant picked up his last paycheck. The hearing officer commented that the claimant's testimony "was not persuasive."

The questions of whether the claimant sustained a compensable injury, whether he timely reported his injury and whether he had disability, presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The hearing officer could believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). The hearing officer was acting within her province as the fact finder in resolving the conflicts and inconsistencies in the evidence against the claimant. Nothing in our review of the record reveals that the challenged determinations are so against the great weight of the evidence as to be

clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, no sound basis exists for us to disturb those determinations on appeal.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NORTHERN INSURANCE COMPANY OF NEW YORK** and the name and address of its registered agent for service of process is

**LEO MALO
ZURICH NORTH AMERICA
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Edward Vilano
Appeals Judge